IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5565 OF 2005

Shri Ninad Balasaheb Jadhav & Ors. ..Petitioners.

Versus

Vidya Sahakari Bank Ltd. & Ors. ..Respondents.

Mr.Manoj Nayak for the Petitioners.

Mr. Nitin Deshpande for the Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : 24TH AUGUST, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Deshpande, learned Advocate waives service of rule for the Respondent No.1.

Heard by consent.

2. The petitioners are admittedly the guarantors for the loan obtained by the respondent No. 2 from the respondent No.1 Bank. The respondents Nos. 3 and 4 are the other guarantors.

3. By this petition, the petitioners have challenged the order of the Maharashtra State Co-operative Appellate Court, (Mumbai) Bench, Pune at Pune, refusing to entertain stay application in review application in respect of its earlier order dated 12.07.2005. The petitioners have also challenged the order dated 17.08.2005 of the Appellate Court, refusing to take certain documents on record.

4. The matter arises this way. The petitioners have filed a dispute under section 91 of the Co-operative Societies Act in which they have interalia prayed that they be discharged from their liability as guarantors to the opponent No.2. In this dispute, there are averments to the effect that there is admittedly a recovery certificate obtained by the bank but there is no mortgage decree obtained by the bank. The Co-operative Court has dismissed this dispute on the ground that it had no jurisdiction; and the jurisdiction to challenge the apprehended action and the sale of the petitioners property lies under 107 of the Rules framed under the Co-operative Societies Act; hereinafter referred to as the

"Rules".

5. The Co-operative Court also directed the return of the plaint.

6. The Appellate Court set aside the said order, directing the return of the plaint but maintained the order of the Co-operative Court regarding jurisdiction. Instead of challenging the order of the Appellate Court, the petitioners preferred to file a review application with a stay application therein alongwith an application for production of certain documents. According to the petitioners the said documents which were not disclosed to the petitioners, clearly reveal that the borrower was a defaulter and that the respondent No.1 Bank has granted a loan inspite of the fact that the respondent No.2 was a known defaulter. This application for production has been rejected by the Co-operative Appellate Court alongwith review petition on the ground that there is no question of permitting additional evidence to be brought on record since no evidence has been received at all; the dispute having been rejected on the ground of want of jurisdiction in the Co-operative

Court.

7. The learned counsel for the petitioners contended that a review ought to have been allowed since new material had been discovered, which has bearing on the matter and therefore, the review ought to have been entertained.

8. I am of view that there is no merit in this petition since prima facie, the courts below have rejected the petitioners' dispute on the ground that the dispute is an oblique attempt to challenge the recovery certificate under section 101 of the Co-operative Societies Act for which the disputant has a remedy under the Rules. The Appellate Court has rightly come to the conclusion that the so-called additional evidence has no bearing on the question of jurisdiction.

9. The petitioners having challenged the order pertaining to the jurisdiction of the Co-opertive Court under sections 91, 92 and 93 of the Act, the Appellate Court was right in rejecting the stay application made in the review petition. Even here in

this petition, the petitioners have not challenged the original order of the Maharashtra State Co-operative Appellate Court, rejecting the petitioners dispute for want of jurisdiction. They have merely, challenged the order of the Co-opertive Appellate Court, refusing stay to its earlier order dated 12.07.2005 and refusing the permission to produce additional documents.

10. I find no infirmity, jurisdictional or otherwise, in the order of the Co-opertive Appellate Court. Rule discharged. Petition is dismissed.

DT.24.08.05 (S.A.BOBDE,J)

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